Supreme Court U.S.
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No. 02-0988

(2)

In The
Supreme Court of the United States

HARTFORD INSURANCE COMPANY OF THE MIDWEST, an Indiana corporation,

Petitioner,

vs.

CATT MICHELE HUTH, an individual,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Has this Court determined that a discretionary abstention-based remand is not governed by 28 U.S.C. §1447(c), as such a remand is not based on lack of subject matter jurisdiction or defects in removal procedure, per *Quackenbush v. Allstate Insurance Company*, 517 U.S. 706 (1996)?

2. Does Hartford erroneously contend that only 28 U.S.C. §1447(c) can support the remand, relying upon *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976), not understanding that *Quackenbush* qualified *Thermtron* insofar as discretionary abstention-based remands are concerned?

3. Has Hartford abandoned its claim that the District Court abused its discretion in denying discretionary federal jurisdiction in this pure insurance declaratory judgment action (involving only state law issues) under the Federal Declaratory Judgment Act (FDJA), in accordance with the discretionary jurisdiction factors declared by this Court in *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995) and in *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491 (1942)?

4. Is there a conflict among the circuits regarding the pertinent issues of law?

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REASONS FOR DENYING THE WRIT

Inexplicably, Hartford's petition for certiorari abandons any claim that the District Court abused its discretion in applying the *Brillhart* factors – and in deciding **not** to exercise **discretionary** federal jurisdiction in this pure Federal Declaratory Judgment Act (FDJA) case. This represents a complete about-face for Hartford. *See* the Opinion (App.1-7) and Order (App. 8-14).

Hartford's Petition for Certiorari now only claims, in essence, that a federal court has **no discretion** to deny discretionary federal jurisdiction in any FDJA case in which the plaintiff's state court declaratory action has been removed, claiming that the removed state court case cannot be remanded.

To state such a position is to foreshadow its summary rejection. No case so holds. This Court ruled to the contrary in *Quackenbush*:

> " * * * . We have thus held that in cases where the relief being sought is equitable in nature or otherwise discretionary, federal courts not only have the power to stay the action based on abstention principles, but can also, in otherwise appropriate circumstances, decline to exercise jurisdiction altogether by either dismissing the suit or **remanding it to state court**. * * * .

Quackenbush, 517 U.S. at 721, emphasis supplied, and:

> " * * * . Under our precedents, federal courts have the power to dismiss **or remand** cases based on abstention principles only where the relief being sought is equitable or otherwise discretionary. * * * ."

Quackenbush, 517 U.S. at 731, emphasis supplied.

Hartford cites *Thermtron* (Petition, p. 5) as the primary authority for its *Quackenbush*-rejected position, apparently unaware that *Quackenbush* (517 U.S. at 711-712) cites *Thermtron* in declaring that an "**abstention-based remand order** does not fall into either category of remand order described in §1447(c), as it is not based on lack of subject matter jurisdiction or defects in removal procedure" (emphasis supplied).

Such discretionary abstention is extended to FDJA cases, *Quackenbush*, 517 U.S. at 718-719, citing *Wilton*.

There is absolutely nothing in the text of the FDJA, 28 U.S.C. §2201(a) which restricts the discretionary exercise of discretionary FDJA jurisdiction in the manner advocated by Hartford:

> "(a) In a case of actual controversy within its jurisdiction * * * any court of the United States, upon the filing of an appropriate pleading, **may** declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. * * * ."

28 U.S.C. §2201(a), emphasis supplied.

"May" is the operative word which provides the basis for the unbroken line of cases which leave to the discretion of the district judge the discretionary decision to exercise or not exercise discretionary FDJA jurisdiction, subject to review for abuse of discretion.

See also the underlying *Huth v. Hartford Ins. Co. of the Midwest*, 298 F.3d 800 (9th Cir. 2002) Opinion (reproduced in Petition for Certiorari, App. 1-7), which provides the following analysis (App. 3 and 6-7):

> "*Section* 2201 *Jurisdiction*
>
> "The exercise of jurisdiction under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(a), is committed to the sound discretion of the federal district courts. *See, e.g., Wilton v. Seven Falls Co.*, 515 U.S. 277, 282-83 (1995); *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 494-95 (1942); *Gov't Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1223 (9th Cir. 1998) (en banc). Even if the district court has subject matter jurisdiction, it is not required to exercise its authority to hear the case. *See Dizol*, 133 F.3d at 1223.
>
> * * *
>
> " * * * . Hartford argues the district court erred because no 'exceptional circumstances' justify abstention. 'Exceptional circumstances,' however, is not the standard for discretionary jurisdiction under 28 U.S.C. § 2001. *Wilton*, 515 U.S. at 286-88 (distinguishing *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 810-20 (1976)). * * * ."

Huth v. Hartford (reproduced in Petition for Certiorari, App. 3 and 6-7).

See also the District Court's underlying discretionary analysis of the *Brillhart* factors in its Order (reproduced in Petition for Certiorari, App. 8-14), including these observations (App. 12-13):

> "3 Hartford asks the court to place great weight on the fact that Huth filed her state court action after notice of Hartford's federal suit. The court notes that timing is legally insignificant given *Wilton*, in which the court upheld staying a federal action in favor of the state action which was filed one month later. 515 U.S. at 280.
>
> [and]
>
> "4 Hartford argues there is no state court action as it has been removed to federal court. The Court does not find this argument persuasive. Clearly CIV-00-2345 began in state court. Once this court decides to remand the action the case will proceed in state court rather than federal court. Hartford can not avoid the Court's jurisdictional discretion under the FDJA by removing a state court action and then arguing no state court action exists."

ORDER, U.S. District Court (in Petition for Certiorari, App. 12-13).

Given the foregoing, some overall comments are now directed to the Hartford's Petition's stated contentions and authority:

1. Regarding pages 5-7 of the Petition, it affirmatively appears that Hartford's basic premise (erroneously based upon *Thermtron*) is that there can be no discretionary abstention remand. This Court held to the contrary in *Quackenbush*, which is dispositive. The remand in this pure declaratory judgment action was well within the discretion of the District Judge.

2. Regarding the claimed conflict among the circuits (pages 8-13 of the Petition), there is no conflict. Not one of

the cited cases shares the factual and legal-discretionary attributes of this action.

3. Hartford is under the mistaken impression that a discretionary abstention remand is not possible; however, *Quackenbush* holds to the contrary (unknown to Hartford).

4. Then, thinking that the removed state court case somehow disappears forever, once removed, Hartford goes down the irrelevant semantic path regarding whether removal means that there is no concurrent or pending or parallel state court proceeding.

5. The simple answer is that *Quackenbush* held that the district court may order a discretionary abstention remand relative to, among other types of abstention, *Wilton* FDJA abstention. The District Court so ordered, in this case.

CONCLUSION

It was well within the discretion of the District Judge to decline discretionary FDJA jurisdiction, to stay Hartford's FDJA case and to remand Huth's Arizona declaratory action. Hartford has now conceded that there was no abuse of discretion by failing to urge abuse of discretion as an issue in its Petition for Certiorari. The Petition for Certiorari should be summarily denied.

Respectfully submitted,

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